Intermec Technologies Corp. v. Palm, Inc. Doc. 30

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CLRB HANSON INDUSTRIES LLC, ET AL., ) C-05-03649-JW
) DECEMBER 1, 2008
PLAINTIFFS, )
)
V. )
) PAGES 1 - 30
GOGGLE, INC., )
)
DEFENDANT. )
_______________________ )

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: SUSMAN GODFREY
BY: STEPHEN D. SUSMAN
5TH FLOOR
654 MADISON AVENUE
NEW YORK, NEW YORK 10065

FOR THE DEFENDANT: PERKINS COIE
BY: DAVID T. BIDERMAN
FARSCHAD FARZAN
TIMOTHY J. FRANKS
FOUR EMBARCADERO CENTER
SUITE 2400
SAN FRANCISCO, CALIFORNIA 94111

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

Dockets.Justia.com

SAN JOSE, CALIFORNIA DECEMBER 1, 2008

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

THE CLERK: CALLING CASE NUMBER 05-3649, CLRB HANSON INDUSTRIES LLC, ET AL., VERSUS GOOGLE, INC.

ON FOR DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT. TEN MINUTES EACH SIDE.

COUNSEL, COME FORWARD AND STATE YOUR APPEARANCES.

THE COURT: DON'T BE SHY. TELL ME WHO YOU ARE.

MR. SUSMAN: YOUR HONOR, I'M STEVE SUSMAN OF SUSAN GODFREY ON BEHALF OF THE PLAINTIFF CLASS.

THE COURT: MR. SUSMAN.

MR. BIDERMAN: GOOD MORNING, YOUR HONOR. DAVID BIDERMAN ON BEHALF OF GOOGLE.

THE COURT: MR. BIDERMAN. VERY WELL. AND SO THIS IS YOUR MOTION, MR. BIDERMAN?

MR. BIDERMAN: IT IS, YOUR HONOR.

THE COURT: ALL RIGHT. DO YOU WANT TO SPEAK FURTHER TO IT?

MR. BIDERMAN: I WOULD, AND I WOULD LIKE TO RESERVE SOME TIME FOR REBUTTAL.

THE COURT: ALL RIGHT. WE'VE ALLOWED TEN MINUTES FOR EACH SIDE FOR THIS. SO HOW MUCH TIME DO YOU WANT FOR YOUR REBUTTAL?

MR. BIDERMAN: THREE MINUTES IS FINE, YOUR HONOR.

THE COURT: GO AHEAD.

MR. BIDERMAN: YOUR HONOR, BASICALLY THE PLAINTIFFS HAVE TRIED, I THINK, TO SORT OF CLOUD THE ISSUE. BUT THIS CASE, THIS MOTION CAN COME TO THREE VERY SIMPLE POINTS, AND I'M ADDRESSING THE 120 PERCENT RULE ISSUE.

THE COURT: RIGHT.

MR. BIDERMAN: BASICALLY THE COURT HAS RULED ON MAY 14TH, 2008 THAT PLAINTIFFS AND GOOGLE ENTERED INTO A CONTRACT WHICH SPECIFICALLY ALLOWED GOOGLE TO CHARGE UP TO 120 PERCENT OF A DAILY BUDGET. THAT'S POINT NUMBER ONE. SO THERE'S A CONTRACT CLAIM.

THE ONLY CLAIM THAT IS LEFT IS A 17200 CLAIM FOR WHICH THERE NEEDS TO BE SOME TYPE OF INJURY AFTER PROP 64. THAT'S POINT NUMBER ONE.

POINT NUMBER TWO IS WE SUBMITTED EVIDENCE THAT, A, WE NEVER CHARGED THE PLAINTIFFS MORE THAN 120 PERCENT OF THEIR DAILY BUDGET; AND, B, THAT WE NEVER CHARGED THE PLAINTIFFS MORE THAN THEIR DAILY

BUDGET TIMES EITHER THE NUMBER OF DAYS IN A MONTH OR THE NUMBER OF DAYS IN A BILLING PERIOD, IF THE BILLING PERIOD WERE SHORTER THAN A MONTH. THAT'S THE SECOND POINT. SO WE HAVE SET FORTH OUR EVIDENCE.

THE THIRD POINT IS THAT IN RESPONSE TO THAT EVIDENCE, YOUR HONOR, WE HAVE SEEN NOTHING FROM THE PLAINTIFFS, NOTHING, NO NEW DECLARATIONS, NO NEW DEPOSITION TESTIMONY, NO EXCERPTS AT ALL THAT HAVE SHOWN THAT THEY HAVE SUSTAINED ANY COGNIZABLE INDEPENDENT INJURY AS REQUIRED UNDER 17204 PROPOSITION 64 THAT WOULD SHOW THAT THEY WERE SOMEHOW DAMAGED BY OUR DELIVERY OF CLICKS WHICH ARE ESSENTIALLY VISITORS TO THEIR SITE OVER THEIR DAILY BUDGET ON ONE DAY VERSUS ANOTHER DAY.

AND, YOUR HONOR, I HAVE GIVEN THIS TO COUNSEL. I JUST USE THIS AS AN ILLUSTRATION.

HERE'S -- THIS WOULD BE AN EXAMPLE OF A $10 DAILY BUDGET WITH A SEVEN DAY BILLING PERIOD, JUST TO KEEP THINGS SIMPLE.

PLAINTIFFS ACKNOWLEDGE, AND THE COURT HAS AGREED, THAT THEY WOULD AGREE THAT THEY WOULD TAKE $10 OF CLICKS, $10 WORTH OF VISITORS TO THEIR SITE ON ANY GIVEN DAY AND THEY WOULD AGREE THAT AS LONG AS WE GOT TO $10 THEY WOULD PAY THAT AMOUNT. THE

TOTAL IS $70 WORTH OF CLICKS.

WHAT WE DO AND WHAT WE TELL THE PLAINTIFFS WE DO AND WHAT THE CONTRACT SAYS WE CAN DO IS BECAUSE WE CAN'T GUARANTEE THAT YOU'RE GOING TO GET VISITORS ON YOUR SITE THROUGH YOUR ADVERTISEMENTS ON A SPECIFIC DAY, THAT WE WILL AVERAGE OUT THAT AMOUNT SUCH THAT WE'LL TAKE YOU UP TO ABOVE 120 PERCENT OF YOUR DAILY BUDGET ON A GIVEN DAY.

SO, FOR EXAMPLE, HERE IF THEY GOT $8 WORTH OF CLICKS, WE TELL THEM THAT WE CAN TAKE THEM UP TO $12 WORTH OF CLICKS THE NEXT DAY OR $8, $12, ET CETERA.

AND, YOUR HONOR, WHAT THE PLAINTIFFS HAVE NOT DONE, THEY HAVE NOT SHOWN, DESPITE THERE WAS AN INVITATION IN FOOTNOTE 8 TO YOUR HONOR'S PRIOR RULING ON MAY 14TH, 2008 WHERE YOU SAID IF THEY HAVE OVERCAPACITY PROBLEMS OR IF SOMEHOW THEY CAN'T MAKE USE OF THOSE CLICKS, THAT COULD BE A COGNIZABLE INJURY. THAT THEY HAVE NOT DONE THAT.

THEY HAVE NOT INTRODUCED ANY EVIDENCE WHATSOEVER THAT GIVEN THESE EXTRA CLICKS ON A TUESDAY SOMEHOW CAUSED THEM ANY DAMAGE INSTEAD OF GETTING THOSE CLICKS ON A MONDAY. NO EVIDENCE WHATSOEVER.

THEY HAVE PUT FORTH NOTHING THAT WOULD SUGGEST THAT THESE EXTRA CLICKS WERE SOMEHOW LESS VALUABLE THAN THE CLICKS THAT THEY RECEIVED ON AN EARLIER DAY. THEY SUBMITTED NO EVIDENCE THAT THEY DIDN'T ACTUALLY RECEIVE VISITORS TO THE SITE. NO EVIDENCE, YOUR HONOR, NONE WHATSOEVER THAT SUGGESTS THAT THEY DIDN'T ACTUALLY GET BENEFITS FROM THOSE CLICKS BECAUSE THEY GOT VISITORS TO THE SITE.

SO THIS IS WHAT THEY HAVE DONE. THEY HAVE NOT ALLEGED THAT THERE HAS BEEN ANY DAMAGE. AN EXAMPLE WOULD BE SUPPOSE IT'S 11:59 P.M. ON A MONDAY, THEY GET $8 WORTH OF CLICKS. TUESDAY, 12:01 THEY GET $2 WORTH OF CLICKS. THEY HAVEN'T SHOWN ANY DAMAGE FROM THAT BASICALLY SPREADING THOSE CLICKS OVER TIME WHATSOEVER.

INSTEAD, YOUR HONOR, WHAT THE PLAINTIFFS HAVE SAID IS THAT THEY BASICALLY SAID THIS IS WHAT THEY WANT BECAUSE THEY WANT TO NEVER GO OVER THEIR DAILY BUDGET. BUT THE TRUTH IS, YOUR HONOR, IS THAT THIS IS, IN FACT, WHAT PLAINTIFF STERN TESTIFIED IS THAT WHAT PLAINTIFFS WANT IS THIS: THEY WANT THE EXTRA CLICKS, THEY TAKE THE EXTRA CLICKS, THEY BENEFIT FROM THE EXTRA CLICKS, BUT WHAT THEY WANT TO DO IS ESSENTIALLY GET SOMETHING FOR NOTHING AND THEY WANT TO PAY FOR THIS THE LOWER

AMOUNT. AND THAT'S WHAT THEY'RE TRYING TO DO IN THE LAWSUIT.

AND, YOUR HONOR, UNDER PROPOSITION 64 THEY HAVE TO HAVE SOME KIND OF AN INDEPENDENT INJURY, AND THEY HAVE NOT ALLEGED ANY.

AGAIN, THE COURT INVITED THEM.

THE COURT: LET ME SLOW YOU DOWN.

MR. BIDERMAN: SURE.

THE COURT: AS TO THE ORANGE HYPOTHETICAL LET'S ASSUME THAT IT IS WHAT THE PLAINTIFFS WANT, WHAT IS THE DIFFERENCE IN THE BILLING BETWEEN THE WHAT LOOKS LIKE PURPLE, OR IS THAT BLACK? I CAN'T TELL.

MR. BIDERMAN: IT'S BLUE, YOUR HONOR.

THE COURT: WHAT IS THE DIFFERENCE BETWEEN THE BLUE HYPOTHETICAL AND THE ORANGE HYPOTHETICAL WITH RESPECT TO WHAT IS BILLED?

MR. BIDERMAN: THIS IS A HYPOTHETICAL BUT IN THIS EXAMPLE IT WOULD BE 65 BECAUSE IT WOULD NEVER GO OVER THEIR DAILY BUDGET.

AND THE POINT IS, YOUR HONOR --

THE COURT: WHY ARE THEY BILLED MORE IN THE BLUE HYPOTHETICAL?

MR. BIDERMAN: BECAUSE BLUE IS WHAT WE ACTUALLY DO, YOUR HONOR.

THE COURT: I KNOW. BUT WHY DO THEY BILL MORE? WHY ARE THEY BILLED IN EXCESS OF THEIR DAILY BUDGET?

MR. BIDERMAN: BECAUSE AS THE COURT HAS RULED, WE'RE ALLOWED TO TAKE THEM UP TO 20 PERCENT ABOVE THEIR DAILY BUDGET ON A GIVEN DAY. SO WE WILL LOOK AT THIS. THEY HAVE AGREED THEY WILL PAY $70. THEY HAVE $70 WORTH OF CLICKS HERE, AND THEY HAVE $70 WORTH OF CLICKS HERE. THEY GOT THE $70 WORTH OF CLICKS. THEY GOT THE BENEFIT.

THE ONLY BENEFIT IS THAT THE CLICKS WERE NOT SPREAD OUT, BUT WE CAN'T SPREAD THEM OUT BECAUSE WE CAN'T CONTROL WHETHER SOMEBODY IS GOING TO VISIT THEIR SITE.

THE COURT: BUT THE ORANGE HYPOTHETICAL IS POSSIBLE.

MR. BIDERMAN: YOUR HONOR, THE ORANGE HYPOTHETICAL IS POSSIBLE TO DO, BUT THAT'S NOT THE WAY WE DO IT. IT'S NOT THE WAY WE ARRANGE TO DO IT, AND IT'S NOT THE WAY THE AGREEMENT PROVIDES.

AND OUR POINT HERE, FOR PURPOSES OF THIS MOTION, IS THAT IF THEY'RE TO SAY THAT THE ORANGE HYPOTHETICAL IS WHAT THEY WANT, THEY HAVE TO SHOW UNDER PROPOSITION 64 THAT THEY WERE SOMEHOW INJURED BY RECEIVING THESE CLICKS ON A TUESDAY RATHER THAN

A MONDAY.

IN OTHER WORDS, THEY HAVE GOT TO SAY, IT'S -- PROPOSITION 64 SAYS, ONE, THEY HAVE TO SHOW AN INJURY AND IN FACT; AND, TWO, THAT THEY LOST MONEY OR PROPERTY.

AN INJURY IN FACT MEANS SOMETHING THAT IS A COGNIZABLE INJURY. IT'S NOT JUST A CLAIM WHICH THEY SET FORTH IS THAT WE DIDN'T WANT THOSE CLICKS. THAT'S NOT ENOUGH. THAT COULD BE A CONTRACTUAL REMEDY, BUT AS THE COURT SUGGESTED IN FOOTNOTE A, THEY COULD COME FORTH AND TRY TO SAY, YOU KNOW, GEE, WE COULDN'T ACCEPT THESE EXTRA CLICKS THAT DAY. THE VISITORS WEREN'T AS GOOD. THEY HAVE CAPACITY PROBLEMS. WE COULDN'T SHIP THAT DAY. THEY HAVEN'T PUT FORTH ANY EVIDENCE OF THAT.

IN FACT, YOUR HONOR, THE EVIDENCE THAT THEY PUT FORTH IS WHEN THEY DID HAVE CAPACITY PROBLEMS, THEY WOULD PAUSE AND THEY WOULD JUST SHUT DOWN THE SITE ENTIRELY AND PAUSING IS STILL PART OF THE CASE BUT NOT PART OF THIS MOTION.

THE COURT: WELL, PART OF WHAT I HAVE TO KEEP TRACK OF AS I LISTEN TO BOTH OF YOU TODAY, AND I'LL GIVE YOU A MOMENT TO RESPOND, IS THAT THIS IS A MOTION THAT CHALLENGES THE STANDING OF THE CLAIMS.

MR. BIDERMAN: EXACTLY.

THE COURT: IT IS NOT A MOTION WHERE I'M NOW ADJUDICATING WHETHER OR NOT THERE IS A REMEDY THAT SHOULD BE AWARDED AT THE END OF THE EVIDENCE IN THE CASE.

AND SO THE QUESTION OF STANDING IS, IS THERE A COGNIZABLE CLAIM UNDER CALIFORNIA LAW WHICH REQUIRES INJURY?

AS LONG AS IT APPEARS TO THE COURT THAT WHAT GOOGLE CALLS A DAILY BUDGET IS REALLY A PERIODIC BUDGET AND NOT A DAILY BUDGET, IT SEEMS TO ME THAT I HAVE TO AT LEAST THEORETICALLY FIND THAT THERE IS A CLAIM THAT CAN BE STATED, WHETHER OR NOT THERE ARE PEOPLE OUT THERE WHO FIT THAT CATEGORY IS A DIFFERENT MATTER, BUT A CLAIM CAN BE STATED BECAUSE ONE WHO SIGNS UP FOR A DAILY BUDGET IS DIFFERENT THAN ONE WHO SIGNS UP FOR A MONTHLY BUDGET OR A PERIODIC BUDGET.

AND ALTHOUGH I AGREE WITH YOU THAT IN THE WORLD OF ELECTRONIC ADVERTISING IT WOULD BE SURPRISING THAT THERE ARE INDIVIDUALS WHO WOULD COMPLAIN ABOUT RECEIVING MORE ADVERTISING THAN THEY BUDGETED AS LONG AS THEY ARE BILLED THE SAME.

ON A DAILY BASIS, THEY ARE INDEED NOT ONLY RECEIVING MORE THAN THEY BUDGETED BUT THEY ARE

BEING BILLED FOR MORE THAN THEY BUDGETED AND THAT IS THE REASON THAT I HAVE LEFT THIS ONE ASPECT OF IT.

IF YOU HAVE IT ON A CONTRACT BASIS, THERE IS A LIMITED GROUP THAT I HAVE EVEN ALLOWED ON A CONTRACT BASIS BUT UNDER 17200 THE PROBLEM IS THAT GOOGLE MAINTAINS AND CONTINUES TO MAINTAIN THAT IT'S PERMISSIBLE TO CHARACTERIZE THIS AS A DAILY BUDGET.

BUT EVERY PRESENTATION I HAVE HEARD PRESENTS IT'S A PERIODIC BUDGET.

MR. BIDERMAN: CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BIDERMAN: BUT THE POINT HERE IS THAT THE PLAINTIFFS UNDER 17200, IT IS A STANDING MOTION, THEY REALLY HAVE TO PROVE SOME KIND OF AN INJURY, AND UNDER RULE 56 THEY ARE SPECIFICALLY REQUIRED TO COME FORTH WITH SOME EVIDENCE OF SOME INJURY.

THE COURT HAS SUGGESTED WAYS THAT THEY COULD BE INJURED. THEY HAVE NOT COME FORTH WITH THAT EVIDENCE.

I WOULD REFER THE COURT TO THE CASE AS THAT WE CITED, THE CELLCO CASE WHERE ESSENTIALLY A --

THE COURT: BUT ISN'T THAT MORE APPROPRIATELY A MOTION FOR SUMMARY JUDGMENT ON SAYING THAT THERE IS LIABILITY BUT NO DAMAGES?

I MEAN, IF YOU BRING IT AS A STANDING ISSUE, I TAKE A DIFFERENT LOOK AT IT THAN I DO IF YOU'RE BRINGING IT AS A MOTION WHERE I'M TRYING TO ADJUDICATE THE CASE.

MR. BIDERMAN: WE'RE NOT ASKING YOU TO ADJUDICATE THE CASE. WE'RE JUST SAYING THAT THEY HAVE TO ALLEGE AND PROVE AN INJURY TO HAVE STANDING UNDER PROPOSITION 64. THEY DON'T HAVE STANDING UNDER PROPOSITION 64 BECAUSE THEY HAVE NOT SET FORTH AS REQUIRED UNDER RULE 56(E)(2) SPECIFIC FACTS SHOWING THAT, IN FACT, THEY WERE INJURED.

THE COURT: BUT IF THEY BUDGET $10 AND I KNOW THAT THIS COULD BE A THOUSAND DOLLARS.

MR. BIDERMAN: SURE. ABSOLUTELY.

THE COURT: OR A HUNDRED THOUSAND DOLLARS. BUT IF THEY BUDGET $10 AND YOU ADMIT THAT ON A GIVEN DAY THAT THEY BUDGET $10, THEY WILL BE CHARGED MORE THAN $10, THEN THEY HAVE STATED AN INJURY.

THE VERY FACT THAT YOU WILL CHARGE THEM MORE -- IN OTHER WORDS, WHY SHOULD GOOGLE BE THE ONE TO DETERMINE THAT ON THE SECOND DAY THEY REALLY

OUGHT TO EXCEED THEIR BUDGET?

MR. BIDERMAN: YOUR HONOR, ONE, BECAUSE YOUR HONOR HAS RULED THAT WE CAN AS A MATTER OF CONTRACT.

THE COURT: RIGHT, BUT I'M NOT TALKING CONTRACT.

MR. BIDERMAN: I UNDERSTAND. I UNDERSTAND. BUT, TWO, I REALLY THINK THE LAW IS FAIRLY CLEAR UNDER PROP 64. THEY HAVE TO COME FORWARD WITH SOMETHING THAT SAYS THAT I WAS HURT BY THOSE EXTRA $2 ON TUESDAY, AND THEY HAVEN'T DONE THAT, YOUR HONOR. BUT WE REQUEST THAT THE COURT CONSIDER THAT, LOOKING AT THE PROP 64 CASE THAT WE CITED, CELLCO, CHAVEZ.

THE COURT: LET ME TRY THIS ONE MORE TIME.

MR. BIDERMAN: SURE.

THE COURT: WHY IS IT NECESSARY TO SAY MORE THAN THE FACT THAT I HAVE BEEN CHARGED MORE THAN I BUDGETED? TO BE HURT MEANS TO BE -- I SET A BUDGET AND THAT'S SOMETHING I WANT TO MAINTAIN AND THE REPRESENTATION IS MADE THAT I CAN SET IT ON A DAILY BASIS, INDEED I CAN CHANGE IT DURING THE COURSE OF THE DAY.

MR. BIDERMAN: SURE.

THE COURT: BUT I CAN SET IT ON A DAILY BASIS.

AND THE ADMISSION ON THE PART OF GOOGLE IS THAT WE WILL NOT HONOR THAT BUDGET. WE WILL CHARGE YOU MORE THAN ON THE DAY.

MR. BIDERMAN: AND WE TELL THEM.

THE COURT: WHY ISN'T THAT PROOF OF HARM?

MR. BIDERMAN: BECAUSE JUST SAYING THAT YOU DIDN'T WANT THOSE CLICKS AND YOU DIDN'T WANT THOSE VISITORS ISN'T PROOF OF HARM JUST AS IN CHAVEZ THE PLAINTIFF SAID, "I THOUGHT THE SOFT DRINKS WERE MADE IN SANTE FE. I DIDN'T WANT THEM BECAUSE THEY WERE MADE IN SANTE FE." AND THE COURT SAID, "YEAH, BUT THE SOFT DRINKS ARE JUST AS VALUABLE EVEN THOUGH THEY'RE MADE IN CALIFORNIA."

HERE, WHAT IT SHOULD HAVE DONE AND WHAT THEY COULD HAVE DONE AND SAID, LISTEN, ON THIS SECOND DAY I JUST HAD TOO MANY VISITORS TO MY SITE. I COULDN'T ACCEPT THOSE CLICKS. THOSE CLICKS WEREN'T VALUABLE TO ME. I COULDN'T SHIP. SOMETHING SPECIFIC THAT SAYS, OR THESE VISITORS JUST WEREN'T AS VALUABLE. SOMETHING THAT SAYS AND THE COURT REFERRED TO THAT IN FOOTNOTE 8. BASICALLY THE COURT SAID, IF THERE'S A PROBLEM WITH CAPACITY, AND I CAN'T USE THOSE CLICKS, FINE.

BUT ONCE WE -- YOUR HONOR, THE BURDEN IS ON THEM TO PROVE STANDING, AND THEY HAVE TO COME FORTH WITH MORE THAN JUST A BALD STATEMENT THAT THEY DIDN'T WANT THOSE CLICKS.

THE COURT: LET ME TURN TO YOUR OPPONENT AND SAVE THE REST OF YOUR TIME FOR REBUTTAL.

MR. BIDERMAN: THANK YOU.

THE COURT: DO YOU HAVE A SMALL VERSION OF YOUR CHART THERE?

MR. BIDERMAN: I DO.

THE COURT: THANK YOU.

MR. BIDERMAN: LET ME APPROACH, YOUR HONOR.

THE COURT: MR. SUSMAN.

MR. SUSMAN: THANK YOU, YOUR HONOR. YOUR HONOR, GOOGLE'S THIRD IN AN APPARENTLY NEVER ENDING SUCCESSFUL PARTIAL SUMMARY JUDGMENT MOTION SERIES IS AN ATTEMPT TO MAKE IT IMPOSSIBLE TO CERTIFY ANY CLASS OR TO SO LIMIT THE CLAIMS OF THE NAMED PLAINTIFFS THAT GOOGLE WILL BE ABLE TO SET UP THE ARGUMENT THAT THEY LACK THE ABILITY TO REPRESENT THE CLASS EVEN THOUGH THEY HAVE SIMILAR CLAIMS, THEY'RE NOT IDENTICAL CLAIMS.

FOR THE PURPOSE OF THE UCL AND FAL CLAIMS, PLAINTIFFS HAVE SUFFERED INJURY, IN FACT, YOUR HONOR, BECAUSE THEY HAVE LOST MONEY. THEY WERE CHARGED AND PAID FOR CLICKS THAT THEY DID NOT SEEK, EXPECT, OR REQUEST.

GOOGLE'S CLAIM THAT THIS IS NOT ENOUGH IS BASED NOT ON FOOTNOTE 8 BUT FOOTNOTE 10 OF THE COURT'S OPINION IN DENYING GOOGLE'S SECOND MOTION FOR SUMMARY JUDGMENT.

THE COURT IN THAT SAID THREE THINGS:

FIRST WHETHER THERE WAS AN ACTUAL INJURY IS NOT DIRECTLY AT ISSUE IN THE PARTIES' BRIEFS;

SECOND, THE COURT SAID THAT THERE ARE TRIABLE ISSUES OF FACT AS TO WHETHER A CUSTOMER WOULD SUFFER ACTUAL INJURY;

THIRD, THE COURT SAID AN EXAMPLE OF ACTUAL INJURY MIGHT BE OVEREXPOSURE ON CERTAIN DAYS WHICH WOULD CREATE DIFFICULTIES IN MEETING DEMAND AND MAINTAINING CUSTOMER SATISFACTION.

GOOGLE RELIES ON THE NOT DIRECTLY AT ISSUE DISCLAIMER TO AVOID THE TRIABLE ISSUE OF FACT CONCLUSION. YET IT CEASES UPON THE EXAMPLE TO SUGGEST THAT WITHOUT EVIDENCE OF DIFFICULTIES CAUSED BY OVEREXPOSURE THE PLAINTIFFS HAVE NOT BEEN INJURED SIMPLY BY HAVING BEEN BILLED AND PAID FOR SOMETHING THAT THEY DID NOT REQUEST OR WANT.

NOW, THE PLAINTIFFS, WE ARE UPSET WITH

HAVING TO RESPOND TO SUCCESSIVE MOTIONS FOR SUMMARY JUDGMENT ON ISSUES THAT COULD HAVE BEEN RAISED PREVIOUSLY, BUT I WANT TO GO TO THE MERITS OF THEIR LACK OF INJURY AND FACT ARGUMENT BECAUSE, FRANKLY, I AGREE THAT IT HAD BEEN FULLY BRIEFED IN THE PARTIES' BRIEF. I DON'T THINK THE PARTIES INTENDED ITS EXAMPLE IN FOOTNOTE 10 TO BE AN EXCLUSIVE TYPE OF INJURY.

THROUGHOUT ITS BRIEF IN SUPPORT OF ITS MOTION FOR THIRD SUMMARY JUDGMENT, GOOGLE CLAIMS THAT IT IS SOMEHOW RELEVANT THAT, QUOTE, "PLAINTIFFS PAID NO MORE THAN THEY AGREED TO PAY AND THAT PLAINTIFFS RECEIVE," QUOTE, "THE BENEFIT OF THEIR BARGAIN."

THIS IS A RED HERRING BECAUSE FOR PURPOSES OF THE UCL AND FAL CLAIMS IS NOT WHETHER PLAINTIFFS PAID MORE THAN THEY AGREED TO PAY BUT RATHER WHETHER THEY PAID MORE THAN ORDINARY ADVERTISERS WOULD HAVE REASONABLY EXPECTED TO PAY.

IF THE BENEFIT OF THE BARGAIN WAS NOT SO PROMINENT THAT A REASONABLE CONSUMER WOULD NECESSARILY SEE IT, IF IT WAS HIDDEN WITHIN AN ADWORDS AGREEMENT OF OVER A HUNDRED PAGES IN LENGTH, THEN, AS THIS COURT HAS PREVIOUSLY HELD, PLAINTIFFS HAVE A UCL, FAL CLAIM, AND THOSE CLAIMS

ARE BASED ON GOOGLE'S STATEMENTS ABOUT CUSTOMERS CONTROL OVER THEIR DAILY BUDGET.

AND I'M QUOTING THE COURT NOW, QUOTE, "IMPLYING IF NOT OUTRIGHT AFFIRMING THAT THE DAILY BUDGET IS THE MAXIMUM CHARGE CUSTOMERS WILL INCUR ON ANY GIVEN DAY," CLOSED QUOTE.

TO ARGUE THAT ADVERTISERS SHOULD HAVE NO RIGHT TO COMPLAIN ABOUT HAVING TO PAY FOR CLICKS THAT THEY DID NOT SEEK, REQUEST, OR EXPECT IS LIKE ARGUING, YOUR HONOR, IF YOU TAKE YOUR CAR TO A CAR WASH AND THEY OFFER YOU ALL OF THESE SERVICES, THIS MENU OF SERVICES, AND YOU SAY, "I JUST WANT THE BASIC WASH."

AND THE CAR GOES THROUGH THE CAR WASH AND INSTEAD OF WASHING YOUR CAR THEY ALSO APPLY WAX TO IT. AND THEY SUBMIT TO YOU A LARGER BILL THEN YOU EXPECTED OR REQUESTED. ARE YOU PROHIBITED -- DO YOU NOT HAVE STANDING TO COMPLAIN THAT YOU ARE BEING BILLED, IN FACT, IF YOU PAID THE BILL, NOT REALIZING THAT YOU WERE BEING CHARGED, WOULDN'T YOU HAVE STANDING TO COMPLAIN THAT YOU ARE GETTING -- YOU ARE HAVING TO PAY FOR SOMETHING THAT YOU DIDN'T WANT, YOU DIDN'T REQUEST, AND YOU DIDN'T SEEK?

THEY -- THAT'S STANDING AND IT'S NOT AN ANSWER FOR THEM TO SAY, WELL, THE WAX JOB DIDN'T

HURT YOUR CAR.

WELL, ACTUALLY THE WAX JOB WAS GOOD FOR YOUR CAR. SO WHY ARE YOU COMPLAINING?

I DON'T CARE WHETHER IT WAS GOOD FOR MY CAR OR NOT. I DON'T CARE WHETHER IT HELPED OR NOT. I DIDN'T WANT IT. I SHOULDN'T HAVE TO PAY FOR IT.

GOOGLE SAYS, AND WE AGREE, THAT A PLAINTIFF CANNOT ESTABLISH INJURY OR STANDING TO SUE UNDER THE UCL SIMPLY BY SHOWING THAT THE DEFENDANT COMMITTED A DECEPTIVE PRACTICE.

BUT THE NAMED PLAINTIFFS IN THIS CASE SHOW THAT THEY, IN ADDITION, WERE DECEIVED TO PAY EXTRA FOR SOMETHING THAT THEY DID NOT WANT.

GOOGLE SAYS, AND WE AGREE, THAT PROPOSITION 64 WOULD BE MEANINGLESS IF MERE PROOF OF A VIOLATION WERE ENOUGH TO ESTABLISH INJURY AND FACT AND STANDING TO SUE. BUT THIS IS NOT THE SITUATION DESCRIBED IN THE LEGISLATIVE HISTORY OF PROPOSITION 64 WHERE, QUOTE, "PRIVATE ATTORNEYS ARE FILING LAWSUITS FOR COMPETITION, WHERE THEY HAVE NO CLIENT WHO HAS BEEN INJURED, IN FACT, UNDER THE STANDING REQUIREMENTS OF THE UNITED STATES CONSTITUTION," CLOSED QUOTE.

NOR IS THIS LIKE THE BUCKLAND CASE THAT THEY RELY ON IN THEIR BRIEFS, WHERE A PLAINTIFF, A

CONSUMER ADVOCATE SUSPECTED THE PLAINTIFFS' MARKETING AND PACKAGING WAS MISLEADING AND BOUGHT THEIR PRODUCT SOLELY TO PURSUE -- TO FILE A LAWSUIT COMPLAINING ABOUT IT.

CLRB HANSON INDUSTRIES AND HOWARD STERN MEET THE DUAL REQUIREMENTS OF PROPOSITION 64. THEY ARE TWO.

FIRST, THEY HAVE STANDING UNDER THE UNITED STATES CONSTITUTION BECAUSE THEY SUFFERED. THE BUCKLAND CASE AGAIN, AND MANY FEDERAL CASES, QUOTE, "AN INVASION OF A LEGALLY PROTECTED INTEREST WHICH IS, A, CONCRETE AND PARTICULARIZED; AND, B, ACTUAL OR EMINENT OR NOT CONJECTURAL OR HYPOTHETICAL.

SECOND, THEY MEET THE SECOND PRONG OF PROPOSITION 14 BECAUSE THEY LOST MONEY AS A RESULT OF HAVING BEEN BILLED AND HAVING PAID FOR SOMETHING THAT THEY DID NOT ORDER.

GOOGLE SAYS THAT IT IS SOMEHOW MATERIAL THAT PLAINTIFFS WERE HAPPY TO RECEIVE CLICKS IN EXCESS OF THEIR DAILY BUDGET, BUT JUST BECAUSE YOU'RE HAPPY TO RECEIVE SOMETHING YOU DIDN'T ORDER LIKE A WAX JOB DOESN'T MEAN THAT YOU LOSE ANY STANDING TO COMPLAIN ABOUT HAVING TO PAY FOR IT.

GOOGLE PROTESTS IT'S NOT FAIR THAT

PLAINTIFFS SHOULD GET A WINDFALL OF FREE CLICKS AND TO RESPOND TO THAT WE CITED IN OUR BRIEF THE IDEA THAT YOU CANNOT COMPLAIN ABOUT SOMEONE NOT PAYING FOR SOMETHING THAT YOU GAVE THEM BUT THEY DIDN'T REQUEST.

LET ME GO -- SO THAT'S OUR STANDING POINT, YOUR HONOR, WE MEET PROPOSITION 64. AND HE CAN TALK ABOUT PROPOSITION 64 AND IS TALKING ABOUT THE ATTORNEY GENERAL, MY BRINGING A CASE FOR SOMEONE WHO HAS NO CLAIM AT ALL. THAT'S NOT THIS CASE AND IT'S NOT THE BUCKLAND CASE EITHER.

NOW, LET ME GO TO THEIR SECOND POINT WHICH HE HAS NOT ADDRESSED WHICH IS IN HIS BRIEFS BECAUSE I WANT TO DEAL WITH THAT.

GOOGLE CONCEDES THAT THE NAMED PLAINTIFFS HAVE STANDING FOR OVERCHARGES THAT THEY WERE BILLED AND PAID BEFORE THEY LEARNED ABOUT HOW THE 120 PERCENT RULE OPERATED.

SO GOOGLE BACKS OFF THE CLAIM IT MADE IN ITS OPENING BRIEF THAT PLAINTIFFS LACK STANDING AND NOW WANTS THE COURT TO ACCEPT THE DATES OF OCTOBER 21, 2003 FOR STERN AND THE SECOND QUARTER OF 2004 FOR HANSON AS BEING THE DATES WHEN THEY ACQUIRED KNOWLEDGE AND WHEN THEIR CLAIM SHOULD BE CUT OFF.

BUT THE QUESTION IS, YOUR HONOR,

KNOWLEDGE OF WHAT? THAT GOOGLE HAD PERIODICALLY CHARGED THEM 120 PERCENT OF THEIR DAILY BUDGET OR THAT GOOGLE HAD A POLICY AND PRACTICE WHEREAS GOOGLE CALLS IT A RULE, 120 PERCENT RULE OF CHARGING EVERYONE 120 PERCENT OF THEIR DAILY BUDGET?

TO BE SURE THE PLAINTIFFS COMPLAINED WHEN THEY LEARNED THAT THEY THOUGHT THAT THEY HAD BEEN OVERBILLED. THEY COMPLAINED AND ASKED FOR AN EXPLANATION AND A REFUND. THAT EVIDENCE IN NO WAY ESTABLISHES AS A MATTER OF LAW THAT THE PLAINTIFFS WERE THEN AWARE THAT GOOGLE HAD 120 PERCENT RULE THAT APPLIED TO EVERYONE OR THAT THEY HAD ANY IDEA OF HOW THAT RULE OPERATED.

LET ME GO TO THEIR FINAL POINT, YOUR HONOR. AND THIS IS I THINK IMPORTANT FOR CLEARING UP THE CASE, AND I DO WANT TO MAKE SOME CONCESSIONS HERE.

WITH GOOGLE'S CLARIFICATION THAT IT DOES NOT SEEK SUMMARY JUDGMENT AS TO CUSTOMERS WHO PAUSE AND THE CHANGES IN DAILY BUDGETS WITHIN A DAY HAVE NOTHING TO DO WITH THE TWO PARTIAL MONTH SCENARIOS IDENTIFIED BY THE COURT AS GIVING RISE TO A BREACH OF CONTRACT CLAIM, WE CONCEDE THAT IN NO PERIOD OF TIME THAT A PARTICULAR DAILY BUDGET WAS IN EFFECT

AND A CAMPAIGN NOT PAUSED WERE THE NAMED PLAINTIFFS CHARGED MORE THAN THEIR PARTICULAR DAILY BUDGET MULTIPLIED BY THE NUMBER OF DAYS IN THAT PERIOD.

IN ITS OPINION DENYING GOOGLE'S FIRST MOTION FOR SUMMARY JUDGMENT, THE COURT IDENTIFIED THREE GROUPS OF ADVERTISERS WHO HAVE VIABLE BREACH OF CONTRACT CLAIMS.

HOWEVER, AT HIS DEPOSITION, MR. SAMMET, A GOOGLE REPRESENTATIVE, TESTIFIED THAT GOOGLE NEVER CHARGED ANYONE IN THE FIRST TWO GROUPS WHERE THE CAMPAIGNS INVOLVE NEITHER PAUSING NOR MIDDAY CHANGES IN THE DAILY BUDGET, MORE THAN THE DAILY BUDGET TIMES THE NUMBER OF DAYS WHEN THE DAILY BUDGET WAS IN EFFECT.

IN THE RELIANCE OF THAT TESTIMONY WE HAVE TENDERED YESTERDAY TO GOOGLE A THIRD AMENDED COMPLAINT THAT REMOVES THE PARTIAL MONTH SCENARIOS AS BREACH OF CONTRACT CLAIMS.  THIS CONCESSION OF REMOVING THEM DOES NOT AFFECT OUR UCL OR FAL CLAIMS, AND WE STILL ASSERT THAT THE EXCESS CHARGES IN THE DAILY BUDGET WERE DECEPTIVE AND UNFAIR.

THE CONCESSION ALSO DOES NOT AFFECT THE NAMED PLAINTIFFS' BREACH OF CONTRACT CLAIMS FOR EITHER BEING PART OF A GROUP OF CUSTOMERS WHO PAUSED THEIR ADVERTISING CLAIMS OR BEING PART OF A

FOURTH GROUP THAT THE COURT IDENTIFIED IN A FOOTNOTE IN ITS LAST OPINION, THAT IS, THOSE WHOM DURING A CAMPAIGN GOOGLE OVERSERVED OR AS THE COURT SAID FRONTLOADED AND THEN OVERCHARGED BEFORE THERE WAS ANY DEFICIT TO MAKE UP.

GOOGLE STATES IN ITS BRIEF THAT ITS PARTIAL MOTION HAS NOTHING TO DO WITH EITHER THE EXPECTATIONS OR CONTRACTUAL RIGHTS OF THE ADVERTISERS WHO CHANGED THEIR DAILY BUDGETS DURING THE COURSE OF A SINGLE DAY.

DURING SAMMET'S DEPOSITION TESTIMONY WE LEARNED, YOUR HONOR, THAT WHAT THEY DO, WHEN YOU CHANGE YOUR BUDGET DURING THE COURSE OF THE DAY, THEY TAKE THE HIGHEST BUDGET IT WAS DURING THE COURSE OF THE DAY.

SO, FOR EXAMPLE, IN THE FIRST FEW HOURS OF THE DAY IT WAS $100. AND THE ADVERTISER REDUCES IT, AS HE CAN, TEN TIMES DURING THE DAY HE CAN REDUCE USE AMOUNT OF HIS BUDGET. THEY STILL CAN'T APPLY THE 120 PERCENT RULE TO THE HIGHEST THE DAILY BUDGET EVER WAS.

WE CLAIM THAT THAT WAS ITSELF A DIFFERENT BREACH OF CONTRACT THAN WE HAVE ALLEGED. IT'S INCLUDED IN OUR THIRD AMENDED COMPLAINT AND, THAT IS, YOU CAN'T TELL ADVERTISERS YOU CAN CONTROL HOW

MUCH YOU SPEND IN A DAY, NOT IN A SEGMENT OF A DAY BUT YOU CAN CONTROL HOW MUCH YOU SPEND IN A DAY BY LOWERING YOUR BUDGET THROUGH THE DAY AT LEAST TEN TIMES.

AND WE CLAIM THAT WHERE THEY CONTINUED TO USE THE HIGHEST SEGMENT OF THE DAY, THE FIRST SEGMENT WHERE THE BUDGET WAS LOWERED DURING THE DAY, THAT IS A CLEAR BREACH OF CONTRACT.

THE COURT: LET ME UNDERSTAND -- I UNDERSTAND YOUR ARGUMENT AND MUCH OF WHAT YOU'RE NOW TELLING ME I UNDERSTAND FROM THE PLAINTIFFS' POSITION, THIS THIRD AMENDED COMPLAINT, IS THAT SOMETHING THAT YOU'RE DOING BY STIPULATION?

MR. SUSMAN: I HAVE GIVEN -- YOUR HONOR, IT WAS IN THE COURSE OF GETTING READY FOR THIS THAT I TRIED TO CLEAN IT UP. I SENT IT TO THEM YESTERDAY. THEY HAVE A RED LINED COPY. THEY HAVE NOT HAD AN OPPORTUNITY TO LOOK AT IT. THEY WILL -- I'LL ASK THEM WHETHER THEY WILL CONSENT AND IF THEY WILL NOT, WE WILL HAVE TO FILE A MOTION.

MR. BIDERMAN: YOUR HONOR, WE GOT IT LATE IN THE EVENING LAST NIGHT. WE HAVEN'T REVIEWED IT.

THE COURT: WELL, I WON'T CONSIDER ANYTHING ABOUT THAT UNTIL I HAVE IT BEFORE ME.

MR. BIDERMAN: THAT'S FAIR.

THE COURT: YOU RESERVED SOME TIME FOR REBUTTAL.

MR. BIDERMAN: I DID, YOUR HONOR. JUST ON THE -- THE PLAINTIFFS' CAR WASH EXAMPLE ISN'T, IN FACT, EXACTLY CORRECT BECAUSE YOU HAVE TO REMEMBER THAT THESE PLAINTIFFS DON'T ADVERTISE FOR MORE THAN ONE DAY.

THE CAR WASH EXAMPLE WOULD BE IF YOU GO THROUGH THE CAR WASH ON DAY ONE AND YOU DON'T GET YOUR DEODORIZER AND YOU GO THROUGH THE CAR WASH ON DAY TWO AND YOU PAY -- I'M SORRY. YOU GO THROUGH THE CAR WASH ON DAY ONE AND YOU SAY I AGREE I'LL TAKE THE CAR WASH AND THE DEODORIZER. YOU GO THROUGH THE CAR WASH ON DAY ONE, YOU DON'T GET THE DEODORIZER. YOU GO THROUGH THE CAR WASH ON DAY TWO, WE GIVE THE DEODORIZER ON DAY TWO.

THE COURT: AND I WANTED THE DEODORIZER ON DAY ONE. WHAT IF I HAD A HOT DATE? IT DOESN'T DO ME ANY GOOD ON DAY TWO.

MR. BIDERMAN: AND IF THEY WANT, THAT'S THE KIND OF EVIDENCE WE WERE LOOKING AT. THEY DIDN'T HAVE THE HOT DATE EVIDENCE, JUDGE.

THE COURT: I UNDERSTAND THE PROBLEM. I UNDERSTAND THE PROBLEM. I THOUGHT YOU ALL WERE GOING TO RESOLVE THIS CASE AFTER MY LAST ORDER.

I HAD PROMISES FROM YOU ALL THAT YOU WERE CLOSE TO RESOLVING THE CASE, AND YOU GAVE US ONE MORE CLARIFICATION AND I WILL GIVE YOU CLARIFICATION ON THIS.

AND I DO BELIEVE THAT THERE IS STANDING ALLEGED, AND I'LL PUT IT IN WRITING SO THAT YOU HAVE IT BECAUSE I CONTINUE TO REGARD THE REPRESENTATION OF A DAILY BUDGET AS A MATTER OF SUBSTANCE.  AND ALTHOUGH OUT OF THE REALITIES OF THE WORLD BILLINGS ARE DONE ON PERIODS OTHER THAN DAYS, TECHNICALLY A PERSON CAN SAY, I ONLY WANT TO ADVERTISE ON A SINGLE DAY AND EACH DAY THEN BECOMES A MATTER OF A NEW CONTRACT, A NEW BUDGET, A NEW PERIOD FOR BILLING PURPOSES AND IT SEEMS TO ME THAT AS LONG AS IT'S CALLED DAILY BUDGET, YOU HAVE TO LIVE UP TO THAT WITH RESPECT TO CONSUMER EXPECTATIONS.

IT WOULD BE EASY TO CHANGE IT TO A PERIODIC BUDGET BY SIMPLY CALLING IT A PERIODIC BUDGET AND BECAUSE I THINK ON A CONTRACTUAL BASIS IT IS EXPLAINED TO BE A PERIODIC BUDGET BUT THAT DOESN'T END THE STATUTORY OBLIGATION TO CONSUMERS TO TREAT IT AS YOU CALL IT WHICH IS AS A DAILY BUDGET.

SO I AM INTENDING TO DENY THE MOTION FOR

PARTIAL SUMMARY JUDGMENT AS IT'S PHRASED ON THIS BASIS.

THERE ARE SOME OTHER THINGS IN HERE THAT WE HAVEN'T TALKED ABOUT HERE TODAY THAT THE COURT HAS CONSIDERED, BUT IT SEEMS TO ME THAT THIS CASE HAS LANGUISHED A LITTLE BIT BASED UPON THIS.

I'M HEARING THAT WE'RE NOT AT A POINT -- ARE YOU HERE TODAY FOR CASE MANAGEMENT?

MR. SUSMAN: YES, WE ARE, YOUR HONOR.

MR. BIDERMAN: WE HAVE ONE AT 10:00, YOUR HONOR.

THE COURT: LET ME HAVE YOU STAND BY, TOO. I HAVE ONE MORE MOTION I THINK.

MR. BIDERMAN: SURE.

THE COURT: AND THEN WE CAN TALK ABOUT A SCHEDULE OF WHAT YOU NEED TO DO NEXT ANTICIPATING THE ORDER THAT I INDICATED.

MR. SUSMAN: THANK YOU, YOUR HONOR.

MR. BIDERMAN: AND I WOULD JUST ASK THE COURT TO CONSIDER, BECAUSE IT WILL HELP IN ASSESSING THE CLAIMS AND RESOLUTION ENTERING THE ORDER, WHICH IS ESSENTIALLY OUR FALLBACK POSITION WHICH IS BECAUSE THERE IS A CAUSATION ELEMENT IN 17204, THAT IS, THE DAMAGES HAVE TO BE, QUOTE, "AS A RESULT OF THE VIOLATION" WITHOUT SAYING WHEN THEY

LEARNED OR WHAT IS SUFFICIENT TO CAUSE THEM TO LEARN. ONCE THEY LEARNED OF THE WAY THAT THEY DID CHARGE FOR OUR BILLING, I DO NOT BELIEVE THAT THEY CAN SAY THAT THE QUOTE-UNQUOTE, "FALSE ADVERTISING," SOMEHOW CAUSED THEIR INJURY AND THAT WILL HELP US IN TERMS OF ASSESSING THE CASE.

MR. SUSMAN: I'M NOT REALLY GOING TO HELP VERY MUCH, YOUR HONOR, BECAUSE I NEVER CONTESTED THAT. I MEAN, I'M NOT GOING TO SAY -- THE QUESTION IS WHEN WE LEARNED WE WERE BEING OVERBILLED VERSUS WHEN WE LEARNED THEY HAD A POLICY OF OVERBILLING PEOPLE AND COMPLAINING THAT IT WASN'T GOING TO DO ANY GOOD.

AT THE LATER POINT IN TIME, WE CAN'T CONTINUE TO BE DECEIVED AND RECOVER FOR IT. I READILY ADMIT THAT. IT'S NOT EVEN AN ISSUE HERE. SO YOU DON'T HAVE TO ENTER SOME DECLARATORY JUDGMENT ON SOMETHING THAT IS NOT EVEN AN ISSUE.

THEIR PAPERS WANTED YOU TO PICK TWO DATES WHICH WERE THE DATES ESTABLISHED BY SOME DISCOVERY THUS FAR OF WHEN THEY FIRST COMPLAINED ABOUT BEING OVERBILLED. THAT'S NOT THE SAME AS KNOWLEDGE OF THE 120 PERCENT RULE.

AND SO THAT WOULD BE APPROPRIATE. AND THAT'S NOT GOING TO INTERFERE WITH OUR SETTLEMENT

OF THE CASE.

THE COURT: LET'S TALK AT THE CASE MANAGEMENT CONFERENCE MORE ABOUT THIS.

MR. SUSMAN: THANK YOU.

MR. BIDERMAN: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)